

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)

PETITION OF THE WIRELESS)
CABLE ASSOCIATION)
INTERNATIONAL, INC. ET.AL.)

RM-9060

For revisions in Parts 21 and 74 of the)
Commission's rules governing the)
Multipoint Distribution Service and the)
Instructional Television Fixed Service)

To: The Commission

JOINT COMMENTS

Schwartz, Woods & Miller, on behalf of the Instructional Television Fixed Service (ITFS) licensees listed in Attachment A, files these comments in response to the Public Notice DA97-637, released March 31, 1997 regarding the Petition for Rulemaking filed by the Wireless Cable Association International, Inc. et al.

1. The parties to these Joint Comments (Commenters) include a broad spectrum of ITFS licensees. Some have held licenses for over 20 years and operate widespread networks based on traditional ITFS design considerations including hundreds of receive sites. Others are license holders which have Excess Capacity Leasing Agreements with "wireless cable" entrepreneurs and which are still pursuing construction and activation of facilities. Some have participated in the conversion of analog television systems to digital transmission systems.

2. As a preliminary procedural matter, while the Commenters desire to stress that additional time is needed for thorough study of the Petition and the

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supporting technical studies in the necessary detail, the Commenters agree that the Commission should move forward with a Notice of Proposed Rulemaking to consider the changes in licensing and regulation of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS) recommended by Petitioners. The Commission should do so with all deliberate speed, but with adequate time for educators which operate on an academic schedule to participate in the proceeding. In light of the academic schedules which predominate among many of the Commenters, a comment date in late September or early October would certainly be appropriate.

3. Unlike the circumstance with the Digital Declaratory Ruling, FCC 96-304 (released July 10, 1996) in which the Commission relied upon theoretical studies in approving certain operations, the Commenters strongly believe that the Commission generally should not process applications proposing two-way operation based on theoretical calculations during the pendency of the rulemaking, even if the licenses are conditioned on non-interference to incumbents. This is because the proposed system changes are so substantial and there is little field experience with the types of systems envisioned by the Petitioners. The Tucson field trial report submitted by Petitioners did not address multi-cellular or sectorized systems because only one cell with 93 response stations was used. Although there is an operating ITFS system in Tucson, no attempt was made to study the effect of digital interference to an analog operation. To date, no field studies have been done to study the effects of the narrowband or "superchannel" transmission systems on existing analog ITFS operations. It is not at all clear how a system with many overlapping return paths, on the same or adjacent

frequencies, returning to many hubs, will perform. In the absence of such studies and further technical analysis, regular licensing of such systems should not yet be permitted. At the very least, if any further non-developmental two-way applications are processed prior to the effective date of rules promulgated pursuant to the proposed rulemaking, they must be universally supported by all adjacent-channel and co-channel interests.

4. The Commission knows well that "wireless cable" is an industry which has struggled for over a decade to achieve a meaningful competitive presence in the market for video delivery. The overall thrust of the Commission's program to encourage the development of "wireless cable" as competition to the traditional cable television industry to date has not succeeded. So far, despite all of the Commission's efforts and even acts of Congress, few wireless cable systems have been activated, most of which are of limited scope and capacity. Service to consumers has been modest at best. Third Annual Report - Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, FCC 96-133 at paras. 52-65.

5. The Commenters applaud the Commission's efforts to encourage development of a "wireless cable" industry which can provide needed service to the public while enhancing the prospects for expanded ITFS service. They are also vitally concerned that any changes in technical rules protect the interests of ITFS licensees providing traditional ITFS service. There are a number of reasons to believe that the "wireless cable" industry may be poised to make significant gains in the market for information distribution services. The Commenters observe that the industry appears

about to turn away from the traditional cable television model toward a mixed business plan which would incorporate telephony and data transmission. The confidence of proponents of such a system is based on a simple truth — there are no other available blocks of frequencies to match the potential capability of the MDS/ITFS bands. The 28 ITFS and MMDS channels represent 168 MHz of contiguous spectrum. (By comparison the Personal Communications Service “A, B, C, D, E & F” blocks together total only 120 MHz). The total MDS/ITFS spectrum available is even greater when MDS channels 1 and 2 and the 125 kHz “response channels” are included. Most of this spectrum has been set aside for educational use, the excess capacity of which can be leased to wireless cable entrepreneurs. Moreover, advances in computer technologies have made digital video a practical alternative to the traditional analog systems, and these new systems will be capable of providing much more service overall.

6. Educators like the Commenters have a tremendous stake in the proposals made by Petitioners. On the one hand, they can benefit from future uses of the spectrum consistent with wireless cable industry needs. ITFS licensees like the Commenters want the ability to participate in the digital video revolution. On the other hand, they need and deserve assurances that any new spectrum uses do not create objectionable interference to traditional ITFS operations. Many of the Commenters have been in operation for years. When the ITFS was created and the first systems licensed in the 1960s, the use of television for instruction to targeted audiences had only begun. Since then, “distance learning” has become a recognized category within the field of education, using a variety of computer and telecommunications

technologies, of which ITFS is only one. Where implemented successfully, traditional analog ITFS provides a service unmatched in cost and efficiency. As the Commission looks to encourage the development of the wireless cable industry, it should remain mindful of the need to protect incumbent ITFS operators and to permit those operators to expand service using the proven and relatively inexpensive analog transmission technology which is available.

7. With these twin goals in mind -- encouragement of flexible "wireless cable" service and protection of incumbent ITFS operations -- the Commission should promptly issue a Notice of Proposed Rulemaking and move quickly toward adoption of the rule changes which will permit willing entrepreneurs to build multi-service telecommunications businesses envisioned for the MDS/ITFS spectrum while continuing to protect incumbent operations. The rules proposed in the Petition should be specifically published in the Notice for comment. In particular, those rule changes which would permit greater flexibility in the means by which ITFS licensees can meet "use" obligations should be considered. Many educators would benefit from the ability to utilize the facilities of "wireless cable" systems for Internet access or to meet internal communications needs. The Commission should also consider adopting the proposed changes in channel-loading and channel-mapping rules, as well as changes which would permit uses other than video transmission to meet a licensee's basic obligation to use the ITFS channels for instructional and educational purposes. The Commenters likewise urge the establishment of definite standards by which ITFS licensees would earn a "renewal expectancy," similar to standards already adopted in the broadcasting and cellular services.

8. In addition, the Commission should consider rules to facilitate the "trading" of frequencies within the ITFS and MDS bands. The new technologies and licensing environment proposed in the Petition present new and largely untested interference issues vis a vis traditional analog ITFS operations. In some cases, an exchange of ITFS channels where the "wireless cable" entrepreneur pays the costs of relocation so that traditional operations can be moved to channels with less potential for interference may be more useful than a forced participation in a digital video project. Where such exchanges are permitted, the Commission should by rule require reimbursement of all costs of channel changes, in a manner similar to the rules governing relocation of microwave incumbents to accommodate PCS operators. Under the circumstances, the rulemaking proposal should consider prospects for allowing the exchange of ITFS-licensed channels for properly restricted MDS-licensed channels.

9. At the same time, the Commenters urge the Commission to protect the rights of incumbent ITFS licensees. These licensees often do not have the resources to do technical studies of the complexity presented in the proposed rules, especially in response to short deadlines. Further, it must be emphasized that those ITFS licensees which do not enter into excess capacity need special consideration under whatever rules are adopted. The Commission should seek information about the costs and complexity of the transition of ITFS systems from analog to digital from the few licensees who have so far participated in these efforts. The Commenters also believe that any substantial changes in the operating rules along the lines proposed by the Petitioners compel a reexamination of excess capacity leasing arrangements made years ago under a completely different set of assumptions as to technology and

permissible operations. Excess capacity leases presently in place have terms as long as ten years, and some of the oldest contracts provide for automatic renewal without any choice by the ITFS licensee. Although some of these leases contain vague language regarding "Combant" service or video compression, the regulatory regime envisioned by the Petition entirely changes the ground rules against which all previous bargaining and negotiations were done. If the Commission permits flexible use of the MDS/ITFS spectrum, it should require that leases approved or submitted for approval under the previous regulatory regime be amended to make clear that the wireless cable lessee and the ITFS licensee have together considered the rule changes adopted and made any appropriate changes to lease terms, prior to the commencement of commercial operations on the frequencies using cellularization, sectorization or differing channelization plans.

10. In summary, the Petition represents an excellent first step in the process toward changing Commission rules which would benefit educational interests as well as entrepreneurs in the "wireless cable" arena. The Commission should promptly issue a Notice of Proposed Rulemaking based on the issues in the Petition and the additional issues proposed above.

Respectfully submitted,

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ATTACHMENT A

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CERTIFICATE OF SERVICE

I, Nancy M. Cassady, Secretary in the law offices of Schwartz, Woods & Miller, hereby certify that I have on this 14th day of May, 1997, sent by First Class United States mail, postage prepaid, copies of the foregoing **JOINT COMMENTS** to:

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